80-601

No.

SUPREME COURT OF THE UNITED STATES

October Term, 1980

KENNETH G. CASSIDY - - - - Petitioner

versus

JOANN GREEN - - - - - Respondent

PETITION TO DENY WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CECIL A. BLYE
608 W. Muhammad Ali Blvd.
Louisville, Kentucky 40202
(502) 585-4266
Counsel for Green

December _____, 1980.

WESTERFIELD-SONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

COUNTER-STATEMENT OF QUESTION PRESENTED

The District Court Judge did not abuse his discretion in awarding the sum of One Thousand Seven Hundred Sixty-Five Dollars ($1,765.00) to Respondent's attorney where Respondent, in good faith, pursued her rights under Title I, Labor Management Reporting and Disclosure Act.

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Cases:

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JOANN GREEN - - - - - *Respondent*

PETITION TO DENY WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Respondent, JoAnn Green, respectfully urges that a Writ of Certiorari be denied to review the proper Order of the United States Court of Appeals for the Sixth Circuit entered August 15, 1980, affirming the decision of the District Court in awarding attorney fees to Respondent for vindicating her right to sue under 29 U.S.C. § 411, § 412, § 521, and § 529.

OPINION BELOW

The unreported Opinion of the United States Court of Appeals for the Sixth Circuit was entered on August 15, 1980. The unreported Opinion of the United States District Court for the Western District of Kentucky was entered on February 15, 1979.

JURISDICTION

The Court's Jurisdiction is authorized by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 529 states:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel or otherwise discipline any of its members for exercising any rights to which he is entitled under the provisions of this Act. The provisions of Section 102 [29 U.S.C.S. § 412] shall be applicable and the enforcement of this section.

29 U.S.C. § 412 states:

> Any person whose rights secured by the provisions of this title [29 U.S.C.S. § 411-415] have been infringed by any violation of this title [29 U.S.C.S. § 411-415 of this title] may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States of the district where the alleged violation occurred, or where the principle office of such labor organization is located.

COUNTER-STATEMENT OF THE CASE

On or about January 27, 1976, pursuant to Title 29, U.S.C., § 501, JoAnn Green filed suit against Local 761, International Union of Electrical, Radio, and Machine Workers Union, alleging misuse of union funds by Kenneth Cassidy and others in support of anti-busing activities in Louisville, Jefferson County, Kentucky. The case is presently on appeal in the Sixth Circuit (No. 79-3259).

On January 29, 1976 in reprisal, union President Kenneth Cassidy filed intra-union charges against JoAnn Green and held a press conference on the steps of the United States Courthouse in Louisville and told the news media that he was going to suspend JoAnn Green from the Union for 50 years for filing suit against the union and its officers. He also preferred intra-union charges against her (Appendix pages 9-10).

JoAnn Green made application to the Court for a temporary restraining order against Cassidy to prevent the 50 year suspension from the Union. Hearing was held on February 3, 1976, at which the Court was informed by counsel that Cassidy had withdrawn the charges and the TRO matter had become moot.

The present action arose when JoAnn Green sued Cassidy for taking reprisal against her and "otherwise disciplining" her for exercising her rights under the Act by filing suit in good faith against misuse of union funds in support of anti-busing activities.

The suit was disposed of by summary Judgment in the District Court in favor of Cassidy, with the Court

awarding attorney fees to JoAnn Green in the amount of $1,765.00 for diligent pursuit of her rights under the Act.

On appeal to the Sixth Circuit by Cassidy, the Court held that the issues were unsubstantial and did not need oral argument. The District Court decision was affirmed.

REASON FOR NOT GRANTING THE WRIT

The petitioner misinforms this Court when he asserts in his Brief that JoAnn Green "sought only to vindicate her personal right through slander action."

JoAnn Green filed this lawsuit to seek relief for the reprisal action taken against her by the Union President, Cassidy, in announcing to the world that he was suspending her from the union for having sued the union. Within the purview of the Act, this reprisal action by Cassidy constitutes punishment and "otherwise discipline" for a union member who sought relief for violation of her federally protected right to sue.

Cassidy would have this Court believe that JoAnn Green filed a personal slander lawsuit for her personal benefit. The suit was filed to seek relief for the punishment, reprisal, and "otherwise discipline" that Cassidy had decreed for JoAnn Green.

The precise common benefit conferred upon the total union membership by JoAnn Green's lawsuit is easily identifiable: Every union member now knows that he or she may sue under the Act without fear of reprisal, punishment, or discipline from the powerful President of the largest labor union in Kentucky.

Further, Cassidy would have this Court believe that JoAnn Green was awarded attorney fees for applying to the Court for a Restraining Order. The activity in this lawsuit covered three years at great expense to JoAnn Green. The union President, Cassidy, did not voluntarily abandon his plan to suspend JoAnn Green for 50 years. This lawsuit caused Cassidy to withdraw the intra-union charges against JoAnn.

This lawsuit by JoAnn Green, in effect, gave notice to her union that each member has federally protected rights to sue to protect the organization from misuse of union funds.

Cassidy's allegation that no common benefit accrued to the union membership and his interpretation of the case of *Hall* v. *Cole,* are grossly inaccurate.

JoAnn Green, by her application for Temporary Restraining Order and filing this lawsuit defended and protected the right to sue by all union members. In *Hall* v. *Cole,* 412 U. S. 1, 93 S. Ct. 1943, 36 L Ed 2d 702 (1972). This Court upheld the discretionary award of attorney fees and the Court's decision is succinctly restated in the Ninth Circuit case of *Ross* v. *International Brotherhood of Electrical Workers,* 544 F 2d 1022 (1976):

> "In *Hall* v. *Cole,* the Supreme Court listed two grounds for discretionary award of attorney fees. (1) The suit was a benefit for the union and the membership. (2) The defendant acted in bad faith.
>
> If either ground is present, the award of fees is permissible at the discretion of the District Court.

> By defending protection of the right to sue, Ross benefitted all the union members. Thus, attorney's fees are allowable."

JoAnn Green submits that both conditions set forth in *Hall* and the dicta expounded in *Ross* are present in the case at bar.

Regardless of the outcome of the suit in the District Court, it was a benefit for the union membership because it advanced and protected each member's right to sue under the Act.

The reprisal action by Cassidy to suspend JoAnn for 50 years was malicious and reeked of bad faith. The charges and the vengeful statements of expulsion made by Cassidy to the media unquestionably were made in bad faith to otherwise discipline JoAnn Green.

CONCLUSION

For the reasons hereinabove stated, the Court is urged to deny the Writ of Certiorari and affirm the decision of the Court of Appeals.

Respectfully submitted,

CECIL A. BLYE
608 W. Muhammad Ali Blvd.
Louisville, Kentucky 40202
(502) 585-4266
Counsel for Green

CERTIFICATE

I certify that a copy hereof was mailed on December 8, 1980 to Attorney William L. Hoge, III, 1112 Kentucky Home Life Building, Louisville, Kentucky 40202.

CECIL A. BLYE

APPENDIX

January 29, 1976

James Luckett
Recording Secretary
Local 761, IUE
5153 Poplar Level Road
Louisville, Kentucky 40219

Dear Mr. Luckett:

My name is Kenneth G. Cassady. I am a member in good standing of Local 761, IUE. I am exercising my rights as a member of Local 761 and as President of Local 761 by filing charges against Mrs. JoAnn Green, Pay #723602, according to our Local Constitution and By-Laws, Article VI, Section 10, paragraphs (3) and (4).

Mrs. Green violated paragraph (3) by refusing to carry out the decision of the Membership which was voted on in February, 1974, August, 1975, and January, 1976, whereby the Membership adopted a resolution against busing, which was written by two minorities, Nancy McKinley and Walter Teasley, and where the Membership voted to spend money to protest the actions taken and where the Membership voted to join U.L.A.B.

Mrs. Green violated paragraph (4) by doing something detrimental to Local 761, IUE, by filing suit in Federal Court to put money back into funds that the Membership acted on, thus causing or going to cause Local 761 to lose countless hours to be spent defending Membership action when we could be resolving problems in the plant, plus costing Local 761 probably thousands of dollars to defend ourselves for carrying out Membership action.

I strongly recommend that since Mrs. Green did not follow Union rules by filing complaints through our Union the proper way, but instead violating our Constitution, and

that since she is interested in going her separate way and wants to control her dues money personally, that she be removed as a Member of Local 761, IUE for a period of fifty (50) years.

/s/ Kenneth G. Cassady
Pay #165720
Building #6, Section 50F